



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 31, 2011

Ms. Michelle Fraga
Assistant County Attorney
Harris County Attorney's Office
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR2011-01612

Dear Ms. Fraga:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 407756 (C.A. File No. 10GEN2657).

The Harris County Constable, Precinct 5 (the "constable") received a request for information pertaining to a specified internal affairs file and any information viewed by or related to the subsequent administrative review board. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and that does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.), *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). You have provided an affidavit which, states, in part, that the submitted information pertains to an internal affairs investigation that resulted in a suspension of an officer and the officer has not yet completed his suspension. However, you have not provided a representation that release of the information at issue would interfere with law enforcement. Accordingly, you have failed to demonstrate that section 552.108

applies. Thus, the constable may not withhold any portion of the submitted information under section 552.108(a)(1).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by statute. Medical records are confidential under the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b)-(c). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). This office also has concluded that, when a file is created as the result of a hospital stay, all the documents in the file that relate to diagnosis and treatment constitute either physician-patient communications or records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician. *See* Open Records Decision No. 546 (1990). We have marked the medical records that may only be released in accordance with the MPA.

Section 552.101 of the also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review, we find that no portion of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Accordingly, none of the remaining information may be withheld under section in conjunction with common-law privacy.

We note section 552.117(a)(2) of the Government Code may apply to a portion of the remaining information. Section 552.117(a)(2) excepts from disclosure the home address, home telephone number, personal pager and cellular telephone numbers, social security number, and family member information of a peace officer, regardless of whether the peace

officer complies with sections 552.024 or 552.1175. Gov't Code § 552.117(a)(2). We note that section 552.117 is applicable only to a personal cellular phone number paid for by the peace officer. See Open Records Decision No. 670 at 6 (2001) (statutory predecessor to section 552.117(a)(2) encompassed personal cellular phone numbers and personal pager numbers of peace officers who purchased cellular or pager service with their personal funds). We also note section 552.117 does not protect a governmental employee's work telephone number. Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. The constable must withhold the information we have marked under section 552.117, to the extent it consists of a home telephone number or a cellular telephone number paid for with personal funds by the peace officer.

We also note section 552.1175 of the Government Code may apply to a portion of the remaining information. Section 552.1175 provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code. § 552.1175(b). To the extent the information we have marked relates to a peace officer of another governmental entity, the constable must withhold this information under section 552.1175 if the individual to whom it pertains elects to restrict access to the information in accordance with section 552.1175(b).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. *Id.* § 552.130(a)(1), (2). Upon review, we find the constable must withhold the Texas motor vehicle information we have marked in the submitted documents under section 552.130. The constable must also withhold the Texas license plates numbers in the submitted recording on this basis.¹

¹We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number, a Texas license plate number, a copy of a Texas driver's license, and the portion of any video depicting a discernable Texas license plate number, under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

Section 552.147 of the Government Code provides “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147(a). Accordingly, the constable may withhold the social security numbers you have marked under section 552.147.²

In summary, the medical records we marked may only be released in accordance with the MPA. The constable must withhold the information we have marked under section 552.117 of the Government Code, to the extent it consists of a home telephone number or cellular telephone number paid for with personal funds by the peace officer. To the extent the information we have marked relates to a peace officer of another governmental entity, the constable must withhold this information under section 552.1175 of the Government Code if the individual to whom it pertains elects to restrict access to the information in accordance with section 552.1175(b). The constable must withhold the Texas motor vehicle information we have marked in the submitted documents, as well as the Texas license plate numbers in the submitted recording, under section 552.130 of the Government Code. The constable may withhold the social security numbers you have marked under section 552.147 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/tf

²Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov’t Code § 552.147(b).

Ref: ID# 407756

Enc. Submitted documents

c: Requestor
(w/o enclosures)